

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600**

<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6113

PETITION OF CATHERINE W. AND CHARLES M. RUSSELL
(Hearings held February 1 and March 22, 2006)

OPINION OF THE BOARD
(Effective date of Opinion, April 20, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-.323(a). The petitioners propose the construction of a second-story addition that requires a 2.06 foot variance as it is within twenty-four (24) feet of the established front building line. The required established front building line 26.06.

The subject property is Lot 27, Block H, Crestview Subdivision, located at 4905 Bayard Boulevard, Bethesda, Maryland, 20816, in the R-60 Zone (Tax Account No. 00479583).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a second-story addition over an existing single-story dwelling.
2. The petitioners testified that the house is Cape Cod in design. The petitioners testified that their lot was recorded in 1935 and that the house was built in 1939. The petitioners testified that the subject property is a narrow, trapezoidal shaped lot and that it is one of the smallest lots in the neighborhood in relationship to the lot's total area. The subject property is 4,668 square feet.
3. The petitioners testified that the proposed construction will not expand or increase the footprint of the existing house and that the existing house is currently sited two feet into the required established front building line. The petitioners testified that because of the shape of the lot, it cuts off at a corner of the property that would have been squared, and that the north and south property lines narrow from back to front.

The petitioners testified that the curve along Bayard Boulevard moves inward at the front of their lot. See Exhibit 10 [revised site plan showing setbacks].

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioners' lot is 4,668 square feet and that the lot is substandard for the R-60 Zone. The Board finds that the subject property is a narrow, trapezoidal shaped lot and that the lot is narrower than the other lots along Bayard Boulevard.

The Board finds that curve along Bayard Boulevard moves inward at the front of the subject property, reducing the front yard of the property. The Board finds that the property's north and south side lot lines, narrow from back to front. The Board finds that the existing house is currently located in the established front building line and that the proposed construction will not increase or expand the footprint of the existing house.

The Board finds that these are exceptional conditions which are peculiar to the subject property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owners.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the variance requested for the construction of a second-story addition is the minimum reasonably necessary.

(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.

The Board finds that the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the variance requested for the proposed construction of a second-story addition will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variance of 2.06 feet from the required 26.06 established front building line granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 5(a) through 5(g) and 10.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Wendell M. Holloway, seconded by Donna L. Barron, with Angelo M. Caputo, Caryn L. Hines and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 20th day of April, 2006.

Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.